

IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

MARK CHANG, an individual;)
ALAN KWOK WAI WONG, an individual)
LIM HONG BENG, an individual,)
HUIOS ENERGY, LLC, an Oklahoma)
limited liability company; and)
OILPODS SINGAPORE PTE LTD.,)
a Singapore private limited company,)

Plaintiffs,)

vs.)

POWDER RIVER PETROLEUM)
INTERNATIONAL, INC., an Oklahoma)
corporation; and BRIAN FOX, an)
individual,)

Defendants.)

DISTRICT COURT
FILED

JUL 14 2008

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

Case No. CJ 2008 04855

J. MICHAEL GASSETT

**PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER,
TEMPORARY/PERMANENT INJUNCTION, AND OTHER EMERGENCY RELIEF, with
SUPPORTING MEMORANDUM OF LAW**

Plaintiffs, Mark Chang ("Chang"), Alan Kwok Wai Wong and Lim Hong Beng, as individuals and on behalf of other investors similarly situated ("Investors"), HUIOS Energy, LLC ("Huios") and OilPods Singapore Pte Ltd. ("OilPods") (collectively "Plaintiffs"), file this Motion for a Temporary Restraining Order, Temporary/Permanent Injunction and Other Emergency Relief ("Motion"), to prevent Defendants, Powder River Petroleum International, Inc. and Brian Fox, from continuing to defraud investors and dissipate assets through a fraudulent, unregistered investment scheme.

Specifically, the Plaintiffs move for Orders: (1) temporarily restraining the Defendants from further violations of the registration and anti-fraud provisions of the applicable securities laws; (2) freezing their assets; (3) prohibiting the destruction or

removal of documents; (4) requiring sworn accountings; (5) obligating them to respond to expedited discovery; and (6) requiring Defendants to show cause why a temporary and/or permanent injunction should not be granted. In a separate Motion, the Plaintiffs also ask the Court to appoint a receiver over Powder River to further preserve the status quo and protect investor assets.

The grounds for this Motion are fully set forth in the accompanying Memorandum of Law. The Plaintiffs also submit a proposed Order.

FACTUAL BACKGROUND

A. Introduction

1. For more than four years, Defendant Fox, a recidivist violator of Canadian, federal and state securities laws, and his company Powder River, have offered securities in the form of fractionalized working interests in oil and gas leases in violation of the registration and anti-fraud provisions of the Oklahoma Securities Act, 71 O.S. §1-101 *et seq.* (the "Oklahoma Act") and in contravention of Oklahoma common law. [See Affidavit of P. David Newsome, Jr., Esq. at ¶¶ 7(A)(3)-(6), Exhibit 1; Affidavit of Mark Chang at ¶¶ 6-18, Exhibit 2; Affidavit of Lim Hong Beng at ¶¶ 2-4, Exhibit. 3.] [See *also*, Public Filing Excerpts of Powder River, Exhibit 5 at pp. 34-35, 40-41, 48, 59-60, 65, 71.]

2. The working interests structured by Defendants and sold to investors are securities within the meaning of the Oklahoma Act, and the "program" of the Defendants is nothing more than an illegal Ponzi scheme utterly dependent on an ever increasing number of new investors to pay existing ones. [See *Newsome Aff.* at ¶¶ 7(A)(3), 7(B); *Chang Aff.* at ¶¶ 6-11; Ex. 5 at pp. 6, 7, 11, 25, 43-44, 54-56.]

3. Defendants have already received more than thirty million dollars from selling these unregistered securities to more than 2,000 people from at least three countries [Ex. 5 at p. 18; *Chang Aff.* at ¶ 8; *Beng Aff.* at ¶ 7]; and these sales have occurred and are occurring due to the Defendants' numerous material misrepresentations and omissions made in connection with the sales [*Newsome Aff.* at ¶ 7(A)(6); *Chang Aff.* at ¶¶ 5, 16-18; *Beng Aff.* at ¶ 3-10].

4. For example, the Defendants know or should know, or are extremely reckless in not knowing, that because of the high price charged for such small working interests and the historic lack of substantial production from the wells assigned to the working interest owners, the only way investors are going to make money is if new investors are recruited and their funds used to pay older investments. [*Newsome Aff.* at ¶¶ 7(A)(6); Ex. 5 at pp. 6, 7, 11, 25, 43-44, 54-56.] Both Fox and Powder River misrepresent and omit these facts and continue to knowingly misrepresent or omit these facts from investors. [*Chang Aff.* at ¶¶ 16-18; *Beng Aff.* at ¶¶ 3-10; Ex. 5 at pp. 6, 18.]

5. In addition, the Defendants also materially misrepresent to investors that they are guaranteed to receive a 9% return on their investments beginning six months after their purchase of a fractional working interest. [Ex. 5 at pp. 6, 18; *Chang Aff.* at ¶ 7; *Beng Aff.* at ¶ 5]. Defendants know or should know, or are extremely reckless in not knowing, that this 9% return guarantee is false and misleading. [See Affidavit of *Godon Romine*, at ¶¶ 5 & 6, Exhibit 4; *Newsome Aff.* at ¶¶ 7(A)(6)(c); *Chang Aff.* at ¶¶ 16-17.]

6. Moreover, the Defendants have not and do not disclose to investors that Defendant Fox has been previously enjoined by the Alberta Securities Commission from

selling or trading securities because of another fraudulent and unregistered securities offering in another company he controlled, or that he was previously barred for 18 months from being or acting as a director or officer of a securities issuer as a result. [See Order of Alberta Securities Commission, Exhibit. 8; *Chang* Aff. at ¶ 18; *Beng* Aff. at ¶ 9].

7. The Defendants also omit telling investors that the operator of its most valuable lease is controlled by John Erhman, a convicted felon and well-known securities recidivist with multiple injunctions for scamming investors in the oil patch and converting those funds to his personal use [See Exhibit 7; *Chang* Affidavit at ¶¶ 13-16; *Beng* Aff. at ¶ 9.] and that Erhman is seeking to foreclose a suspicious multi-million dollar lien on the Defendants' assets. [See Exhibit 10].

8. As of this date, the Defendants' scheme is on the brink of collapse and destined to leave the investors and Plaintiffs with substantial losses. [See Ex. 5 at pp. 2, 23-24; *Newsome* Aff. at ¶ 7(B); *Chang* Aff. at ¶¶ 9-11].

9. The Defendants pose a very real threat to continue violating Oklahoma securities laws and the property and funds of the investors and Plaintiffs are in imminent danger of being lost, removed or materially injured. [See Ex. 5 at pp. 7, 10, 12, 24, 37, 45, 51, 54, 57, 66; Ex. 6 at pp.5, 11, 13-16, 23; *Newsome* Aff. at ¶ 6; *Beng* Aff. at ¶¶ 7, 10.]

B. The Defendants and Other Relevant Entities

10. Defendant, Brian Fox, is an individual resident of Alberta, Canada, and is the President and Chief Executive Officer of Powder River. [Ex. 5 at pp. 6, 13, 14; Ex. 6 at p. 1; see also Oklahoma Secretary of State Records, Exhibit 9]. Fox has been previously enjoined by the Alberta Securities Commission from selling or trading securities because

of another fraudulent and unregistered securities offering and was barred for 18 months from being or acting as a director or officer of a securities issuer. [Exhibit 8.]

11. Defendant, Powder River Petroleum International, Inc., is an Oklahoma corporation with its principal place of business in Tulsa, Oklahoma. [Ex. 5 at p. 6; Ex. 6 at p. 19.] Powder River is the successor in interest by merger to Powder River Basin Corp., a Colorado corporation. [Id.] Powder River is a penny stock company publicly traded on the OTCBB under the symbol "PWDR." [Ex. 5 at p. 6; Ex. 6 at p. 18.]

12. John N. Ehrman ("Ehrman"), is an individual resident of Houston, Texas, and is the founder, owner and chairman of Magnus Oil and Gas Corporation, the operator of one of Powder River's most valuable oil and gas properties known as the Biamonte, Brookshire and Weesatche leases in Goliad County, Texas. [Chang Aff. at ¶ 13.] Many of the securities sold by Defendants are for working interests in the Biamonte, Brookshire and Weesatche leases. [Chang Aff. at ¶¶13-14.]

13. In June 1990, the United States District for the Southern District of Texas permanently enjoined Ehrman from violating the registration and anti-fraud provisions of the federal securities laws based on another fraudulent and unregistered offering of securities (this time in the form oil and gas limited partnerships) where he misappropriated a substantial portion of the offering proceeds for his personal use. [Exhibit 7.] Also, in July 1991, the Securities and Exchange Commission barred Ehrman from association with any broker, dealer, investment company, investment adviser or municipal securities dealer. [Id.] Later, in August 2003, the United States District for the Southern District of Texas again permanently enjoined Ehrman from violating the federal securities laws based on another fraudulent scheme and permanently enjoined Ehrman from aiding and abetting any future

violations. [*Id.*] And even more recently, in July 2007, the United States District for the Southern District of Texas indicted Erhman again on 10 more counts of securities fraud. [*Id.*] Erhman, who was previously convicted of federal fraud charges in 1990, is currently awaiting trial on these “new” charges.

14. Magnus Oil and Gas Corporation (“Magnus”) is a Texas corporation f/k/a Transcontinental Minerals Corporation [See Notice of Lien Foreclosure, Exhibit 10 at p. 2.] Presently, Magnus is attempting to foreclose on a multi-million dollar lien and strip Powder River of a remaining valuable asset to the further detriment of the investors and Plaintiffs. [Ex. 10; *Chang Aff.* at ¶ 15.]

C. Defendants offered and sold unregistered securities

15. From at least 2004 through the present, and without any registration statement on file with any regulatory body, the Defendants have offered and sold unregistered securities in the form of fractional working interests in oil and gas leases in a pyramid scheme through which it has raised at least 30 million from investors in three countries. [Ex. 5 at pp. at pp. 18, 34-35, 40-41, 48, 59-60, 65, 71; *Newsome Aff.* at ¶ 7(A)(3); *Chang Aff.* at ¶ 8.]

16. The sale of the these securities originated in Oklahoma and involved oil and gas leases in Oklahoma, Texas and Louisiana. [Ex. 6 at p. 2; *Newsome Aff.* at ¶ 7(A)(3); *Beng Aff.* at ¶ 13; *Chang Aff.* at ¶ 6.]

D. Misrepresentations and Omissions

17. To induce investors in buying these fractional interests, the Defendants touted the riskless nature of the investments by guaranteeing a 9% return on any amount

invested, and by making numerous other false and misleading statements of fact. [Ex. 5 at pp. 6, 18; *Chang Aff.* at ¶ 7; *Beng Aff.* at ¶ 5.]

18. The false and misleading statements of Defendants to the investors include, but are not limited to:

- (i). oral and written assurances that Powder River was a viable business entity capable of sustaining itself from oil and gas production;
- (ii). oral and written assurances that the working interests sold to investors were almost certain to achieve payout based on historic levels of production and/or anticipated production;
- (iii). oral and written assurances that the Defendants' guarantee of a minimum return of at least 9% to an investor beginning six months after the purchase of a fractional working interest was a practical reality and in no way reckless or un-warranted; and;
- (iv). oral and written assurances that Powder River had acquired all necessary drilling equipment to begin and/or increase and sustain the oil and gas production necessary to pay investor interests

[*Chang Aff.* at ¶ 16; *Beng Aff.* at ¶¶ 3-4.]

19. The Defendants also omitted to state certain material facts to investors that were necessary to make the statements made not misleading under the circumstances.

These materially misleading omissions include, but are not limited to:

- (i). failure to include past performance information that would have permitted an evaluation of Defendants' representations concerning production;
- (ii). failure to disclose the existence of a prior cease and desist order that prohibited Fox from selling unregistered securities in Canada;
- (iii). failure to disclose that the Defendant's operator, Magnus, was controlled by Ehrman, a convicted felon with multiple injunctions and cease and desist orders for violating the registration provisions and anti-fraud standards of federal and state securities laws.

[*Chang Aff.* at ¶¶ 13-14, and 18; *Beng Aff.* at ¶¶ 8-9.]

20. The Defendants fraudulent scheme is dependent on the recruitment of new investors as demonstrated on the face of its public filing statements [Ex. 5 at pp. 6, 7, 11, 25, 43-44, 54-56], which show that for the period of 2006 and 2007, Powder River raised approximately Twenty-seven million dollars (\$27,000,000.00); but that income from oil production was less than 5 million, which leaves insufficient funds to pay the investors their return without using the funds of newly recruited investors. [*Id.* See also Ex. 5 at pp. 7, 10-11, 54; *Newsome Aff.* at ¶ 7(B).]

E. Fox's Role

21. At the heart of this fraud is Fox, the engineer behind the massive Ponzi scheme. He is the founder of Powder River, has authority over company bank accounts and executes agreements and legal documents on its behalf. [See Ex. 5 at p. 6, 13-14; Ex. 6 at p. 20.] Furthermore, Fox speaks at Powder River meetings and other public forums, proclaiming and explaining to investors and potential investors the structure of the fractionalized working interest investments and representing that once an investor is in, the profits will pay them a guaranteed 9% return. [See *Chang Aff.* at ¶ 7; *Beng Aff.* at ¶¶ 1-5.] Fox has boasted that the company has made millions since 2006 and will continue as it grows. [*Id.*]

F. Receipt of Investor Funds

22. Powder River has received millions in investor funds [Ex. 5 at p. 18; *Chang Aff.* at ¶ 8] and in turn, these proceeds have been used to pay Fox and Erhman millions of dollars since 2006. [Ex. 5 at pp. 11, 14.] Between 2006 and 2007, Defendants' sales of the working interests to investors generated revenue in excess of \$27,000,000, which

amount was received by the Defendants. [Ex. 5 at pp. 7, 10-11, 54.] During the course of the offering between 2004 and 2008, the Defendants have received more than 30 million dollars from investors from the sale of the working interests. [Ex. 5 at p.18.]

G. Other Mismanagement and Corporate Misconduct

23. As a result of the fraudulent sales of the unregistered securities, the Defendants are obligated to make total future interest payments to the Investors in an amount exceeding \$33 million dollars, and are liable to make a minimum annual payment to the Investors in excess of \$5 million beginning in 2008, and in each year thereafter until fully paid. [Ex. 5 at p. 18; *Chang Aff.* at ¶ 9.]

24. Defendants do not have the ability to pay the Investors without using funds fraudulently solicited and induced from other investors. [Ex. 5 at pp. 2, 18, 23-24; *Chang Aff.* at ¶¶ 10-12; *Newsome Aff.* at ¶¶ 7(B).] Powder River is insolvent and is unable to pay its debts as they mature. [*Id.*] In particular, Powder River is unable to pay the nine percent guaranteed return promised to several thousand working interest investors. [*Id.*]

25. During 2007 and 2008, the Defendants' oil and gas production revenue was less than \$5,000,000, and Defendants have failed to make, nor are they able to make, the required interest or principal payments to the Investors. In fact, Defendants have never realized profitable revenues from oil and gas production and do not have the ability to pay the Investors without using funds fraudulently solicited and induced from other investors. [Ex. 5; *Newsome Aff.* at ¶¶ 7(A)(6), 7(B); *Romine Aff.* at ¶ 5-6.]

26. Defendant Fox has intentionally used his authority, control and official capacity as an officer and director of Powder River to further his own private interest in

opposition to the interest of Powder River and has and continues to commit gross mismanagement of Powder River to the detriment of the company. [*Newsome Aff.* at ¶ 7(C); Ex. 5 at pp. 2, 13, 15, 21.]

27. For example, in 2007 Fox caused Powder River to make misleading disclosures and omissions to the Plaintiffs and in reports filed with regulators, in order to allow transfers of money and property from Powder River to Fox and others that were outside the ordinary course of business and/or made without receiving reasonably equivalent value in exchange for the transfers. [*Newsome Aff.* at ¶¶ 7(A)(6), 7(C).]

28. In addition, in 2007 Fox caused Powder River to misrepresent the terms of an agreement to acquire three drilling rigs and related equipment of Texoma, and has omitted disclosing the terms of a subsequent settlement with Texoma and its owner Mark Cook regarding that acquisition. [*Newsome Aff.* at ¶ 7(C); Ex. 5 at pp. 8-9, 20-22; Ex. 6 at p. 17.]

29. In addition, Fox has caused or allowed Powder River to fail to pay invoices from Magnus resulting in the filing of a multi-dollar lien on the Weesatche Lease properties, thereby placing valuable assets of Powder River at unreasonable risks of loss. [Ex. 10.] Fox and Powder River intentionally failed to disclose the existence of these unpaid invoices to Plaintiffs and Investors. [*Chang Aff.* at ¶ 13-14.]

30. In addition, Fox has caused and/or allowed Powder River to commence or continue drilling operations in certain projects (including the Weesatche Lease) long after any reasonably prudent operator would have ceased operations. [*Romine Aff.* at ¶¶ 5-6.]

31. Finally, during this mismanagement of Powder River, Fox received a salary, bonuses and reimbursement from Powder River in excess of \$1.4 million dollars annually.

[Ex. 5 at pp. 11, 14; *Newsome Aff.* at 7(C)(7).]

32. Fox continues to grossly mismanage Powder River to the detriment of its shareholders, creditors and working interest investors and Powder River is currently insolvent. [*Newsome Aff.* at ¶¶ 7(B) AND 7(C); *Chang Aff.* at ¶¶ 9-12; Ex. 5 at pp. 2, 23-24.]

LEGAL ARGUMENT

A. Standard for Injunction

The authority to grant or deny an injunction as a remedy is governed by principles of equity. *Marquette v. Marquette*, 686 P.2d 990 (Okla. Ct. App. 1984). The purpose of a temporary injunction is to prevent injury to a claimed right pending a final determination of the controversy on its merits. *Id.* A temporary injunction merely preserves the status quo until a final determination of a controversy can be made. Title 12 O.S. §1382 authorizes a district court to issue injunctions and restraining orders to achieve precisely that outcome.

Generally, three elements must predicate the issuance of an injunction: (1) a strong probability that plaintiffs will prevail on the merits in the main action; (2) that plaintiffs will suffer irreparable loss and injury if an injunction is not issued; and (3) that plaintiffs have no other plain, speedy or adequate remedy. See *Eason Oil Co. Oklahoma City Petroleum Corp.*, 94 P. 2d 222, 223 (Okla. 1939); *McNeal v. Hauser*, 213 P.2d 559 (Okla. 1949).

As demonstrated, the evidence in this case warrants entry of the requested injunctive relief on all applicable grounds. The declarations and other exhibits amply demonstrate that the Defendants are violating Oklahoma and other securities laws and will continue to violate them if the Court does not immediately restrain and enjoin them from their fraudulent activity, all to the immediate and irreparable injury, loss or damage of

Plaintiffs and the investing public. No other relief is available. As such, injunctive relief is imperative to preserve the status quo and to preclude any further securities violations and prevent any further loss or dissipation of investor funds.

Another proper test for the issuance of an injunction in this context is whether there is a reasonable expectation of future violations by Defendants. *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082 (2d.Circ. 1975). In considering this issue, past illegal conduct is strong support for the likelihood of future violations. *Oklahoma Securities Comm'n v. CFR International, Inc., supra.*

B. Defendants' Prima Facie Violations

The Oklahoma Securities Act prohibits the selling of unregistered non-exempt securities. The evidence is overwhelming that the Defendants' have and are violating the Act by showing that no registration statement was or is in effect or filed for the securities offered and sold by the Defendants. Thus, Plaintiffs have established a *prima facie* case of registration violations by Defendants in connection with its international offering.

Moreover, the Oklahoma Act also prohibits fraudulent conduct in the offer or sale of securities. Again, Plaintiffs proof amply demonstrates that the Defendants are making numerous material misrepresentations and omissions to investors through a variety of means including the company website, recruitment meetings and in person. Defendants have repeatedly failed to disclose that Powder River is a Ponzi scheme which is collapsing under its own weight. They also misrepresent that investors will receive a guaranteed return of income of 9% when they know, or are at least reckless in not knowing, that Powder River cannot sustain those payments without utilizing other investor funds.

Courts generally consider a statement or omission to be material if a reasonable man would attach importance to the fact misrepresented or omitted in determining his course of action. *S.E.C. v. Carriba Air, Inc.*, 681 F.2d 1318, 1327 (11th Cir. 1982). In addition, misrepresentations or omissions about the true nature of a pyramid scheme are *per se* actionable. *S.E.C. v. Prater*, 289 F.Supp.2d 39, 53 (D. Conn. 2003) (“To the extent this is a pyramid scheme, any other characterization of it would unquestionably constitute a material misrepresentation.”) Furthermore, the Defendants’ failure to disclose to investors the prior regulatory history of Fox and its operator Erhman is definitely actionable. See, *S.E.C. v. Merchant Capital, LLC*, 483 F.3d 747 (11th Cir.2007) (clear error not to consider omissions of a cease and desist order as an material misrepresentation.)

C. Likelihood of Future Violations

To assess whether there is a “reasonable likelihood” of future violations, the Court should consider the following factors: the egregiousness of the defendant’s actions, the isolated or recurrent nature of the infraction, the defendant’s recognition of the wrongful nature of the conduct involved, and the likelihood of all opportunities for future violations. *Carriba Air* at 1322. Here, the Defendants pose a very real threat to continue to violate securities laws if the Court does not halt their conduct by issuing a temporary restraining order and injunction.

The Defendants’ conduct in this matter is egregious and demonstrates an actual intent to deceive, manipulate or defraud. The violations have been ongoing and recurrent for more than four (4) years, and as noted, the Defendants continue to raise money from investors worldwide, and thus have ample opportunity to commit future violations. Add to

this mixture the fact that both Fox and Erhman are known securities recidivists, and the Defendants are a high risk to continue to violate the law unless the Court restrains and enjoins them.

D. An Asset Freeze is Imperative to Preserve the Status Quo

Defendants made use of untrue statements of material fact and omitted to state material facts as alleged in Plaintiffs' Verified Petition and the evidentiary materials supplied in support of the Motion. The whereabouts of the money raised by Defendants through their fraud is not known at this time. These circumstances make it necessary that the Court freeze specific assets to preserve the status quo by preventing the dissipation of assets and to account for the money raised through violations of the securities laws so as to protect investors and to provide effective relief.

Pursuant to its general equity powers, the Court may order ancillary relief to effectuate the purposes of Oklahoma's securities laws. An asset freeze "facilitates enforcement of any disgorgement remedy that might be ordered and may be granted even in circumstances where the elements required to support a traditional injunction have not been established. See *S.E.C. v. Unifund SAL*, 910 F.2d at 1041. It is well-recognized that an asset freeze is necessary to ensure that a future disgorgement order will not be rendered meaningless. See *Manor Nursing Centers, Inc.* 458 F.2d at 1106.

Where there are concerns that defendants might dissipate assets, or transfer or secret assets beyond the jurisdiction of the Court, there only needs to be some basis for inferring a violation of the securities laws in order to impose a freeze. *Unifund SAL*, 910 F.2D at 1041-42. Given the egregious nature of this fraud, *to wit*, the fact that: (i)

Defendants have already taken investor proceeds while lying to investors and conducting an unregistered offering; (ii) that Fox has transferred millions to himself; (iii) and the fact that any remaining assets are at risk because of the international connections of the Defendants, an order freezing the Defendants' assets to aid in the potential recovery and return of investor funds is necessary.

E. Accounting and Orders Prohibiting Destruction and Expediting Discovery

An order prohibiting record destruction and an order expediting discovery are both appropriate to prevent the destruction of documents before this Court can adjudicate the Plaintiffs' claims. See, *SEC v. R.J. Allen and Associates, Inc.*, 386 F.Supp 866, 881 (S.D. Fla. 1974). The Court should order expedited discovery so that the Plaintiffs may take meaningful discovery in the 10-day period between entry of the Temporary Restraining Order and any hearing on the Plaintiffs' application for an injunction. In addition, to preserve the Plaintiffs' ability to take effective discovery, the Court should order Defendants not to alter or destroy relevant documents. Obviously, sworn accountings are necessary to enable the Plaintiffs and the Court to determine the amounts the Defendants have raised and spent in perpetration of their fraud and to enable the Court to determine the proper amount of disgorgement. Courts frequently apply their broad powers in this context to prevent securities violators from enjoying the fruits of their misconduct. *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1104.

F. An Ex Parte Temporary Restraining Order is Necessary and Justified

Pursuant to 12 O.S. § 1384.1, a temporary restraining order may be granted in any case to preserve the status quo of a matter in controversy until the question of injunction

can be determined. A temporary restraining order is authorized where it clearly appears that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or its attorney can be heard in opposition.

As the evidence demonstrates, Defendants have engaged in acts and practices in violation of the Oklahoma Securities Act and have, as a result of these activities, received a substantial amount of money from numerous investors. It is unknown exactly how the Defendants have handled the majority of these investor funds, and if where or how any of these funds are preserved. Providing notice of this action to Defendants will most likely lead to further loss of investor funds and consequently cause irreparable injury to them and the Plaintiffs. Therefore, issuing a temporary restraining order is justified and in the public interest.

While courts are cautious to use *ex parte* orders, they are consistently approved in appropriate cases like this, where there is a strong likelihood of continued securities violations and/or investor assets are at risk of being transferred from the jurisdiction of the Court. See *Covington, Knox Inc. v. Texas*, 577 S.W. 2d 323 (Tex. App. Houston [14th Dist.] 1979, no writ). All facts submitted demonstrate a strong likelihood of ongoing violations by Defendants and a great risk that the assets of Powder River and Fox will be further dissipated and/or removed if notice of this action is provided before an injunction order is issued and a receiver appointed.

Through the facts and legal arguments set forth above, the Plaintiffs have satisfied the burden of showing the necessity of an *ex parte* temporary restraining order and other emergency relief. The Plaintiffs therefore request the Court issue the proposed Order accompanying this Memorandum *ex parte*. After the Defendants receive notice and have

a chance to be heard by this Court, the Plaintiffs request this Court issue an injunction and keep the asset freeze and other emergency relief in place pending adjudication of this case on its merits.

WHEREFORE, Plaintiffs request that the Court grant the Plaintiffs' Motion for a Temporary Restraining Order, Temporary/Permanent Injunction and Other Emergency Relief, by issuing an Order ex parte temporarily restraining the Defendants from further violations of the registration and anti-fraud provisions of the applicable securities laws; temporarily freezing their assets; requiring sworn accountings, prohibiting the destruction of documents, obligating them to respond to expedited discovery and requiring them to show cause why a temporary/permanent injunction should not be granted.

In addition, by separate motion the Plaintiffs also move for an Order appointing a receiver over Defendant, Powder River, to further protect the status quo and investor assets.

Respectfully submitted,



Cecil G. Drummond, OBA # 2503
BOETCHER & DRUMMOND, INC.
5200 South Yale, Suite 507
Tulsa, Oklahoma 74135-7489
Telephone (918) 492-8448/Fax (918) 491-6847
Attorneys for Plaintiffs

CERTIFICATE OF MAILING

I, Cecil G. Drummond, do hereby certify that on ____ day of July, 2008, a true and correct copy of the above and foregoing instrument was hand-delivered, faxed or mailed, via United States Postal Service, with proper postage affixed thereon, to:

Defendants


Cecil Drummond